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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Implementation of Section 17 of the
Cable Television Consumer Protection
and Competition Act of 1992

ET Docket No. 93-7

Compatibility Between Cable Systems
and Consumer Electronics Equipment

COMMENTS OF CONTINENTAL CABLEVISION, INC.

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COMMENTS OF CONTINENTAL CABLEVISION, INC.

Continental Cablevision, Inc. submits these comments in response to the Commission's Notice of Proposed Rulemaking in this Docket. Continental is the third largest multiple system operator in the United States and serves nearly 2.9 million basic subscribers across the United States. Continental currently has deployed more than 4 million converters and converter/descramblers. It has previously filed Comments and a Reply¹ in the Inquiry preceding this rulemaking, which it hereby incorporates by reference.

Introduction and Summary

Continental believes it would be a disservice to consumers to compel cable operators to bundle the cost of component descramblers with the price of program services. Such a mandate would be wholly at odds with the Commission's own reading of the 1992 Cable Act that Congress intended equipment costs to be unbundled from program service prices. It would also force those least able to afford to replace their existing TV receivers to subsidize wealthier subscribers' purchase of the latest TV gadgetry. Integrated converter/decoders will continue to

¹See Comments of Continental Cablevision in this Docket, March 22, 1993; Reply Comments, April 21, 1993.

be in demand, as most consumers opt for the remote control, remote volume, parental control, superior tuning, pay-per-view ordering, electronic program guides, and other features which may be added to older receivers by using an integrated converter/decoder. There is no compelling public policy reason for the Commission to force this large majority of customers to subsidize the more privileged who can afford to routinely replace their television receivers.

Nor are bundled prices required to promote compatibility: For a one time investment of \$18, Continental estimates that customers can save nearly \$10 per year by changing to a component interface. Based on increased consumer demand for additional outlets and remotes following last fall's rate reductions, there is no reason to expect that the usual laws of economics will not create increased consumer demand for less expensive interface equipment.

The Commission's proposal to outlaw scrambling on basic service ignores very significant theft of service problems. Theft of service, which amounts to about 25% of the cable industry's subscription revenues, was recognized as a substantial concern by Congress in the 1992 Cable Act and in the Commission's own Compatibility Report. Like other retail merchants, cable operators like Continental struggle with the proper balance between bringing the product closer to the consumer without inviting massive "shoplifting." But each of the security alternatives cited by the Commission suffers severe drawbacks rendering them useless in particular situations. Trapping imposes great cost, rigidity, and customer inconvenience wholly incompatible with a customer-friendly dynamic network. Interdiction is vastly more expensive and would severely curtail the deployment of two-way transactional services likely to be so important to the information super highway. In-the-clear transmission of basic cable service, however appropriate a concept for "free" basic broadcasters who elect antenna status, is incompatible with an

environment in which cable operators pay (through second channels, cross promotions, ad avails, joint marketing, and CNN Headline News inserts) for retransmission consent. At a minimum, in those few markets where scrambling basic is the most viable solution to high theft rates, scrambling should continue to be permitted, and any future scrambling be allowed through a waiver process.

Continental has no objection to providing consumers with information about our own converter hardware and its potential incompatibility problems, but we are not any more able to keep up with the specific brands of compatible equipment and the specific retail locations where they might be available than is a PC maker able to identify all of the specific software which is "IBM compatible." Such a burden, even if it could be met in each of the trading areas for each of the 600 communities served by Continental, would cost the cable industry and consumers at least \$60 million per year, a price wholly out of line with the prospective benefits of buying, rather than renting a remote control. It should be quite sufficient for cable operators to identify the equipment which they have in place, and allow the retail market to respond with advertising for compatible equipment.

Finally, Continental notes the sharp discrepancy between the proposed compatibility requirements for cable operators and the absence of any such requirements for competitors such as DBS and video dialtone, which will suffer similar compatibility issues. The Commission should take this into account as it weighs the relative burden being imposed upon the cable industry.

I. THE COMMISSION SHOULD NOT COMPEL THE COSTS OF COMPONENT
DESCRAMBLERS TO BE BUNDLED WITH PROGRAM SERVICE PRICES

A. Mandatory Bundling of Equipment and Program Services Is Inconsistent
with the Commission's Application of the 1992 Cable Act

If adopted in its present form, the Notice of Proposed Rulemaking would conflict with the 1992 Cable Act and the Commission's own rate regulations relating to equipment pricing. For example, the Commission suggests in the Notice that a distinction can and should be drawn between equipment for which customers may be charged separately and equipment for which charges must be bundled into network costs and recovered through program service charges. Yet the Notice itself admits that this proposal is directly at odds with the Commission's compulsory unbundling of equipment charges in its rate regulations: "Our proposal to require cable systems to provide subscribers with component descramblers at no separate charge departs from our rate regulations regarding unbundling of charges for installation and lease of equipment used to provide service to subscribers." (§30).

In fact, the proposal is far more than simply a departure from Commission rules. In the 1992 Cable Act, Congress provided that "the regulations prescribed by the Commission under this section shall include standards to establish, on the basis of actual cost, the price or rate for ... installation and lease of the equipment used by subscribers ... including a converter box." 47 USC §543(b)(3). The Commission has read this, and the related program service pricing rules, as a categorical requirement for unbundling rates for equipment and installation from rates for basic service. "[I]n order to apply the separate equipment and programming service standards, the rates for each must be unbundled from each other." Report & Order in MM Docket 92-266,

8 F.C.C.2d 2917 at ¶287 (1993). "In addition, an unbundling requirement best addresses Congress' concerns that bundling practices have played a significant role in enhancing cable's market power." Order on Reconsideration, FCC 93-428 at ¶50. Clearly, by forcing new areas of equipment charges to be combined with program services, the Commission would be moving in direct contravention of congressional intent and the Commission's own implementation of the rate regulation rules.

B. Mandatory Bundling of Equipment and Program Service Prices Will Create a Subsidy for the Small Minority of Information "Haves" Who Buy High-End Equipment

Perhaps as significant as the obvious conflict with the letter of statutory and regulatory language, the Notice's mandatory bundling of component descramblers would violate the spirit of the law and sensible social policy by spreading these particular costs across all subscribers. Underlying much of the Commission's Notice is an apparent desire to provide overwhelming financial incentives for individual consumers to replace their converters with component descramblers. But this will not only create artificial incentives for customers to make improper investment decisions they might not otherwise make, it will require the vast majority of those who need and want integrated converter/decoders, and the features they offer, to subsidize the small minority of customers who have no need or desire to extend the life of their investment in their existing TV receivers.

There are two key reasons why the Commission's efforts to reshape consumers' financial incentives are unlikely to succeed in shifting most consumers towards component descramblers and why addressable converters are likely to remain the equipment of most utility to most

consumers. First, in a world of television sets of widely varying ages and capabilities, converters allow for a host of consumer benefits: an extended life for existing, older TV receivers with obsolete tuners; superior tuners that shield against direct pickup interference; remote control/remote volume control features; convenient purchase of pay-per-view channels; access to electronic program guides; and parental control over children's viewing by easy blocking of undesired channels, among other benefits. Thus, even when component descramblers become available, most customers will continue to demand converters based on their benefits for the widely divergent TV receiver marketplace.

A second reason for the likely continued importance of converters rather than component descramblers is that consumer problems which arise with cable "compatibility" do not arise from converter-based scrambling per se. As Continental demonstrated in prior comments, many of the problems which consumers report as "compatibility" problems also arise on systems which do not employ any scrambling at all. The problems actually are quite often the result of improper installation of a VCR (downstream, rather than upstream of the converter) or for a host of other reasons unrelated to scrambling. Continental does not seek to trivialize compatibility problems that are actually caused by scrambling, but the Commission needs to understand that the record evidence before it indicates that compatibility problems are suffered in practice only by relatively few consumers, for relatively brief periods and usually only by those with much higher-end TV receivers. There should be extreme reluctance to visit the costs of curing those problems on the vast majority of subscribers, especially low-income consumers, who will in any case continue to want addressable converters to update the functionalities of their older TV sets.

The fact is, the services facilitated today by component descramblers, such as the ability

to watch picture-in-a-picture with two scrambled channels or watch one scrambled channel while taping another, are needed and used by a tiny minority of upper income cable subscribers.² If Continental cannot seek reimbursement for equipment which provides specialized services to a select group of customers, we will be forced to load those costs onto our overall network. The ultimate result will be that all subscribers would be forced to pay for the distribution of services that would go only to the highest income subscribers, whom no one has demonstrated need or deserve any such subsidy. At a time when government seems focused on a feared gap between "information haves and have-nots," the outcome of the Notice's unbundling requirement would be to disproportionately force the "have-nots" to spend extra money they don't have to deliver still more services to the "haves." Only by separately pricing component descramblers and charging those costs to the subscribers who truly need and want them will the proper balance be struck.

C. The Unbundled Price of Component Descramblers Will Create Savings and Appropriate Incentives for Customers to Buy Component Interface Devices

The Commission need not depart from the mandate of the 1992 Act and the Commission's rate regulations in order to satisfy the Commission's apparent goal of providing an incentive for consumers to migrate from converter/descramblers to TV receivers with the conversion function built in. Simple application of the cost based equipment pricing rules already established by the

²For example, only 6.7% of Continental's customers have a TV with picture-in-picture features, of whom only 6 subscribers reported any problem with this feature, of which fewer than half could possibly be attributed to scrambling. Only 5% of all Continental customers reported any kind of problem with time-delayed recording, none of them due to scrambling. "It's just me not doing the VCR right" was a typical comment. Of the 17% who reported any type of problem in trying to watch one program while recording another, the cause of such problems was five times more likely to be the result of the way the consumer's equipment was hooked up and operated than due to scrambling. Reply Comments of Continental at 7-8.

Commission will supply that incentive. The average cost of a component descrambler will be substantially less than the average cost of a converter/descrambler. Based upon estimates from manufacturers, a component descrambler will cost about 34% less than an addressable converter. In a standard "cost-based" equipment price, in which capital is $\frac{2}{3}$ of the converter cost and maintenance is $\frac{1}{3}$, the typical cost of equipment will drop from \$1.50 to \$1.04, and any rented remote control may be returned for an additional (typical) savings of \$0.35. Thus, a consumer could be able to save \$9.72 per year (\$0.81/mo.) by changing to a component descrambler. Compared with the \$18 retail price estimated by Thompson for a decoder interface, the consumer payback is complete in 22 months. Thus, "unbundled" charges for component descramblers provide ample incentives for customers to migrate to truly cable ready equipment.

The Commission seeks "clear evidence" that reduced prices will fuel market demand for component descramblers. Although we submit that this basic principle of microeconomics is already assumed in the Commission's rate regulations, we offer a specific example: effective September 1, 1993, Continental reduced the cost of additional outlets and remote controls in most of its systems. As result, demand for A/O's and remotes has increased dramatically. We likewise anticipate increased consumer demand when consumers are provided an opportunity to reduce charges for converter/descramblers.

D. Component Descrambler Costs, If Bundled with Program Service Prices,
Should Be Flowed Through as External

If the Commission concludes that it is instead permissible for the costs of component descramblers not to be separately unbundled, then it should provide a mechanism for cost recovery which will provide comparable or better incentives for consumers to migrate to "cable ready" equipment. It could do so by treating the costs of component descramblers as benchmark

"externals" which may be added to the program service price. Externals are intended to provide the recovery for "price changes beyond the operator's control." R&O, 8 F.C.C.2d 2917 at ¶249; NPRM, 8 F.C.C.2d 510 at ¶83. Like externals now embodied in the rate rules, the costs of component descramblers are governmentally imposed and are beyond the control of the cable operator. Nor is there any evidence that such costs are covered by the prices surveyed in the September 1992 benchmark data. Accordingly, a straightforward add-on to the benchmark price is appropriate. This is consistent with the Commission's treatment of all converters as elements of "basic" service.

II. THE COMMISSION SHOULD NOT OUTLAW SCRAMBLING OF BASIC

A. The Commission Should Not Trivialize the Problem of Telecommunications Theft

As Continental established in its prior Comments, theft of cable service cannot be minimized as trivial or victimless. Congress itself recognized "the need to prevent theft of cable service" in adopting the compatibility provision.³ The Commission's Equipment Compatibility Report properly notes that "as Congress has recognized, cable piracy harms cable operators, cable programmers, franchise authorities and, ultimately, law-abiding citizens."⁴ Like retail merchants, cable operators such as Continental prefer to bring the merchandise as "close to the customer" as possible. Indeed, the self-service marketing model is today's business paradigm. The growth of chain stores, self-service merchandise racks and clear packaging all reflect efforts to minimize the "distance" between the consumer and the product. But as products came off shelves and onto self-service racks, theft problems increased to the point where a new term was coined for retail

³47 USC §624A(b).

⁴Consumer Electronics and Cable System Compatibility, Report to the Congress, October 5, 1993, p. 13.

theft: shoplifting. Over time, marketers developed better packaging that balanced the need to reduce shoplifting with the desire to get the merchandise close to the customer. The history of Compact Disc packaging is a case in point. Being much smaller than the LP's they replaced, CD's were easy to pilfer until the packaging was engineered to minimize shoplifting without hurting sales.

The cable industry faces a similar conundrum. As a supplier of a highly valued consumer product, we are subject to the same marketing forces that other consumer service providers face. These marketing forces compel us to get our product "close to the customer," with a minimum of inconvenience. On the other hand, like other retail business, we must balance that desire against the very real economic costs of theft. Today, about \$4.7 billion, or 25% of the cable industry's total subscription revenues, are siphoned off each year by cable theft.⁵ This theft necessarily drives up the cost of service for law abiding customers; introduces signal quality problems from ingress; poses leakage problems through egress; causes outages and increases operating and maintenance costs. In some of Continental's systems, 20% of all service calls are directly related to the consequences of theft. Now that the Nation has embarked on deployment of the Information Superhighway, controlling theft of telecommunications services will be an increasingly important function of government, and we would urge the Commission not to send any signals that would indicate a reduced concern over the seriousness of theft of telecommunications services.

⁵See Comments of Continental Cablevision, Mar. 22, 1993, at 13-20.

B. Scrambling Must Be Retained as the Most Viable Security Measure in Selected Markets

Each of the alternatives to scrambling identified by the Commission are steps backward in security, technological progress and customer convenience. Traps are filters that must be physically installed at the user interface to enable the reception of particular services. The fact that traps must be installed or removed at each subscriber location creates an inflexible architecture which requires customers to be home in order to change service levels, and which requires the operator to physically reconfigure traps at every location to rearrange channels or to introduce new services. Thus, for an operator to add a new service as part of basic service or as part of a cable programming service tier, the traps which enable those channels would have to be replaced and rearranged at every location, creating time consuming, expensive logistics for the cable operator and substantial additional costs passed on to subscribers.

Must-carry channel positioning also creates problems for cable operators that use traps. In practice, a cable operator attempts to cluster similar program services so that a minimum number of traps are required to protect or enable the reception of various services. Since under the Commission's must-carry regulations television stations may choose (and change) their channel position on cable (subject to certain restrictions), and since all over the air television signals must be available on every cable outlet, a television station may request a channel position that negates the cable operator's current trapping system, requiring a complete re-engineering of the system's architecture, with increased equipment and labor costs, not the mention the inconvenience to customers of having to revisit every installation to install new traps. Not only are the use of traps made increasingly problematic because of other, often unrelated, regulations, the traps themselves are not very effective at preventing theft. For example, as

Continental has demonstrated to the Commission's staff, negative traps can easily be removed or drilled out, while positive traps affect only a single channel and introduce signal degradation.

The other technology mentioned in the NRPM—interdiction—is little more effective than traps at preventing signal theft, and unfortunately it is vastly more expensive than any other proposed security method it would replace. At an estimated \$300 -\$400 per installation, not only is interdiction more expensive on a unit basis than other technologies, it suffers from the fact that unlike addressable converter/descramblers, interdiction must be installed at every single subscriber home, regardless of the services to which a customer subscribes. The resulting economics are disastrous. If interdiction were to be mandated, the cost of cable would become prohibitive for many existing subscribers. In addition to the security concerns, costs and customer inconvenience, these technologies also fail to accommodate two-way transactional services.

Despite the undesirability of alternatives to scrambling, Continental does not use scrambling of regulated services as its preferred method of security. Scrambling is tailored to selected markets where piracy rates require it. Basic service is scrambled only in cases of extreme theft and danger, when other alternatives are simply insufficient to arrest theft at a reasonable cost.

C. Outlawing Scrambling Will Invite Theft and Defeat the
Announced Intention of "Tier-Neutrality"

The Commission's proposal to outlaw this last bastion against theft in high crime markets has serious adverse consequences. First, it is an open invitation to more theft. The cable industry is operating in a world where traps and black boxes are available through 800 numbers which keep databases of existing scrambling techniques cable operators use in each market; where national distributors openly advertise in magazines like *Radio Electronics*, airline in-flight

magazines, and national newspapers like the *Wall Street Journal* and *USA Today*. Scrambling provides the best opportunity for tailoring (and periodically upgrading) security codes for specific markets—the same security which the Commission allows for wireless cable, home satellite dishes, and even video dialtone. The present alternatives are woefully inadequate, as indicated above, and future technologies are not yet available in today's real world. For example, broadband descrambling exists only as a "concept in development" at this stage. Therefore, without the potential of scrambling, basic cable services would be opened up to widespread theft.

Second, outlawing scrambling on basic will defeat the Commission's oft-announced intention to assure that its regulations implementing the 1992 Act do not create an incentive to move attractive services to satellite tier. If cable operators are required to open their basic tier to theft in even high piracy markets, the Commission can be assured that cable programming services will not be added to basic, because a secured tier is the only protected means for selling the service. In a stroke, the FCC will have undone the announced intent of its "tier neutrality."

Third, the very notion of in-the-clear basic is inappropriate when basic has become, by statute, more than an antenna service. Some might argue, if they ignore the capital and operating costs of building and operating a cable system, that broadcast signals which are retransmitted without compensation or consent as an antenna service should be available to customers in the clear off cable just as they are off the air. But even if one accepts that premise, the argument fails in a world where cable must secure retransmission consent, at real cost, for the right to carry such signals as part of the cable "product." Continental now provides substantial value to many broadcasters in consideration for their consent to retransmit their over-the-air signals, such as second channels, cross promotion, ad avails, joint marketing campaigns and CNN Headline News

inserts, among others. Basic cable service is no longer simply a community antenna service, because the broadcast programming is no longer freely available or free of cost.

D. Only Narrow Restrictions, If Any, Should Be Imposed On Scrambling

Thus, if the Commission insists on outlawing scrambling on basic, it should do so only with these modifications:

- (1) Existing systems which have historically scrambled basic as an anti-theft measure should be grandfathered to continue to do so.
- (2) Systems which are compelled by theft rates to consider scrambling basic should be permitted recourse to an FCC waiver process.
- (3) The "basic" services which should be affected by the ban on scrambling should be limited to local access channels, local educational broadcast channels, and commercial broadcast stations which have elected must-carry. Only such signals may properly be considered to have an "antenna" status on which anti-scrambling presumptions are based.

III. CONSUMER EQUIPMENT COMPATIBILITY NOTICES SHOULD NOT IDENTIFY SPECIFIC BRANDS OR SPECIFIC MERCHANTS

Continental is fully prepared to advise customers of our own supplied equipment and its potential incompatibility problems as part of our other consumer notices, but the scope of this notification as suggested in the Notice is problematic. In Continental's view, a requirement to identify specific brands of equipment or specific merchants is simply not a workable solution and would create a huge logistical burden and administrative cost. An analogy is helpful in understanding the burden which would be posed by such a requirement. Manufacturers of

personal computers may advertise a PC as "IBM compatible." Conversely, appropriate software is also labeled as "IBM compatible." Using only this information, with some modicum of research, customers can easily determine which kinds of software can run on that PC and which cannot. By comparison, PC manufacturers would be impossibly burdened by having to list all of the ever-changing software which can run on their computer (and where such compatible software could be purchased). Likewise, software publishers would find the task impossible to list every manufacturer's brand and model of computer on which their software could run. Even the most diligent manufacturers and software publishers could not keep pace with all available hardware, software and all retail locations.

Likewise, cable operators are not in a position to know all of the brands of consumer electronics which may operate their equipment, nor all the retail outlets where such electronics are sold. In the cable context, it should be enough to state the manufacturer and model of the converter used by the cable system and explain to consumers that any VCR or other device compatible with that model equipment will operate on that cable system. With minimal inquiry, consumers will be able to determine what brands will operate with the equipment used by their cable company. Many "universal" remotes already identify the brands with which they are compatible, and local merchants can assist customers in making the right choice. Cable operators are not in a position to list all of the every-growing consumer electronics products manufactured which are compatible with a line of converter, any more that a PC manufacturer can keep up with every software product made.

Identifying merchants is an even more treacherous problem. Continental anticipates nothing but trouble in selecting consumer electronics merchants from an area. For example, over

250 electronic equipment and supply stores are listed in greater Boston, Massachusetts Yellow Pages alone, which does not even cover every outlet locally. Should Continental's Boston area systems list every outlet here? Should stores be listed if they are not in the Yellow Pages? Should national catalogues, like Spiegel, and offers of free remotes with the purchase of an unrelated product be included?⁶ Does an operator have an obligation to check the bona fides of the vendors it lists for its customers? If not, would a vendor want to be placed on a list which warned the buyer to beware? Added to this are the difficulties in performing this data collection in each of the 600 franchise areas served by Continental, and the more than 30,000 served by the cable industry generally. Furthermore, each community in each metropolitan area has a different trading area within which consumers may buy from retail electronics merchants. Clearly, this would involve an enormously complex process which would ultimately provide endless sets of federally-reviewed and approved lists which are destined to be burdensome, incomplete, and largely ignored by consumers.

Such extensive notice requirements carry a considerable cost. Continental estimates that the administrative, data collection, record keeping and postage costs to comply with this notification requirement could cost the cable industry and consumers over \$60 million per year. Ironically, this would come at a time when the current rental price of remote controls is often nothing, or at most pennies a month. We believe it makes no sense to charge more to every consumer to learn where they might buy a remote control they may not want or use, or that they already have from their cable companies for nominal or no consideration.

⁶For example, Time Magazine recently advertised on television and in print that it would supply a free remote with a new subscription orders.

IV. THE COMMISSION'S PROPOSAL UNFAIRLY FOCUSES RESPONSIBILITIES SOLELY ON CABLE OPERATORS

DirecTV, the Hughes/General Motors Direct Broadcast Satellite venture that recently launched its first satellite, has announced its expectation of serving 10 million homes by the time this rulemaking takes effect. If this prediction is achieved, then DirecTV would itself be larger than any single cable television company except TCI, and DirecTV is not the only DBS service. Excluding DBS and other video providers from this regulation means that millions of consumers will continue to be affected by consumer electronics ("CE") equipment/distribution system incompatibilities. For example, DirecTV's set-top box would not meet the Commission's proposed compatibility regulation for in-the-clear transmission or by-pass capabilities because the standard DirecTV set-top (\$700) can output only one-channel at a time. If consumers want to watch one program while recording another, they would need a special \$900 DirecTV set-top. *Broadcasting* reported (Dec. 20, 1993) that "Direct-broadcast satellite technology also is likely to hear some criticism [about interface problems with videocassette recorder equipment], since DBS subscribers will not be able to videotape one program while watching another."

As noted in Continental's previous comments, many of the compatibility problems between CE equipment and cable television systems occur due to manufacturing and marketing decision of CE equipment manufacturers and not all are intrinsic to cable's distribution system. Placing the burden of compatibility exclusively on cable, as the rulemaking appears to do, will unnecessarily burden cable subscribers who do not experience the problem, and will not solve compatibility problems caused by CE equipment or other distribution media like DBS, video dialtone, and other video distribution technology.

The added expense of the proposed compatibility regulations are far from insignificant

and will serve to increase costs and eventually cable rates.

Furthermore, the added expenses would apply only to cable providers and could place cable at an economic disadvantage compared with its competitors. If DBS and other video providers are "left out," then potentially millions of consumers will also be left out and will continue to experience incompatibilities between CE equipment and various distribution systems.

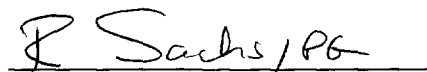
If the Commission does not extend its rules to other video technologies, it must be particularly sensitive to minimizing the burdens on cable operators.

Conclusion

For the foregoing reasons, Continental recommends that the Commission:

1. Permit component descramblers to be priced, like other equipment, unbundled from program service.
2. Not outlaw scrambling on basic, or at a minimum adopt rules which grandfather existing scrambling applications and allow waivers for future applications which affect access channels and must-carry broadcasters.
3. Adopt notice provisions which do not require cable operators to identify specific brands of compatible equipment or the names of specific merchants.

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